IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8062 OF 2005

M/s.Surgipharm Industries .. Petitioner.

V/s.

The Union of India & Others .. Respondents.

Mr.Prakash Shah i/b. PDS Legal for the petitioner.

Mr.V.H. Kantharia with Mr.Y.R. Mishra for the respondents.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 8TH DECEMBER, 2005.

P.C. :

1. Heard Mr.Prakash Shah in support of this petition. Rule. Rule is made returnable forthwith. Mr.Kantharia appears for the respondents.

2. The order under challenge is order dated July 13, 2005 passed by the Customs, Excise and Service Tax Appellate Tribunal in the appeal filed by the petitioner herein, dismissing the same when nobody was present for the petitioner. Mr.Shah, learned counsel appearing for the petitioner accepts that there was gap of communication between the petitioner and their counsel and, therefore, nobody had remained present. It is a matter which was dismissed earlier also for not making the

pre-deposit. Once the fact of deposit was brought to the notice of the Tribunal, the appeal was restored. An amount of Rs.6,00,000/- out of the claim of Rs.13,34,000/- have been deposited by way of pre-deposit.

3. It is only with a view to give an opportunity to the petitioner to substantiate their case on merits, that we set aside the order passed by the Tribunal and restore the appeal to the file of the Tribunal. We make it clear that if the petitioner persists in not remaining present, the Tribunal will be at liberty to pass an order dismissing the appeal.

4. Rule is made absolute in above terms. The impugned order is set aside. The appeal is restored to the file of the Tribunal.

5. The writ petition stands disposed of.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)